

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

CLOUD PEAK ENERGY INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 19 – 11047 (KG)

(Jointly Administered)

Obj. Deadline: June 25, 2019 at 5:00 p.m. (ET)
Hr'g Date: July 2, 2019 at 2:00 p.m. (ET)

**MOTION OF DEBTORS FOR ENTRY OF
AN ORDER (I) APPROVING THE DEBTORS' KEY
EMPLOYEE INCENTIVE PLAN AND (II) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), file this *Motion of Debtors for Entry of an Order (I) Approving the Debtors’ Key Employee Incentive Plan and (II) Granting Related Relief* (the “**Motion**”). In support of this Motion, the Debtors submit the declaration of Josephine Gartrell (the “**Gartrell Declaration**”), attached hereto as **Exhibit B**, and in further support respectfully submit the following:

PRELIMINARY STATEMENT

1. The Debtors commenced these chapter 11 cases to maximize the value of the Debtors' estates for their stakeholders. Recognizing that employee performance will play a critical role in achieving this objective, the Debtors, with the assistance of their benefits and

The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers are: Antelope Coal LLC (8952); Arrowhead I LLC (3024); Arrowhead II LLC (2098); Arrowhead III LLC (9696); Big Metal Coal Co. LLC (0200); Caballo Rojo LLC (9409); Caballo Rojo Holdings LLC (4824); Cloud Peak Energy Finance Corp. (4674); Cloud Peak Energy Inc. (8162); Cloud Peak Energy Logistics LLC (7973); Cloud Peak Energy Logistics I LLC (3370); Cloud Peak Energy Resources LLC (3917); Cloud Peak Energy Services Company (9797); Cordero Mining LLC (6991); Cordero Mining Holdings LLC (4837); Cordero Oil and Gas LLC (5726); Kennecott Coal Sales LLC (0466); NERCO LLC (3907); NERCO Coal LLC (7859); NERCO Coal Sales LLC (7134); Prospect Land and Development LLC (6404); Resource Development LLC (7027); Sequatchie Valley Coal Corporation (9113); Spring Creek Coal LLC (8948); Western Minerals LLC (3201); Youngs Creek Holdings I LLC (3481); Youngs Creek Holdings II LLC (9722); Youngs Creek Mining Company, LLC (5734). The location of the Debtors' service address is: 385 Interlocken Crescent, Suite 400, Broomfield, Colorado 80021.

compensation advisor, Willis Towers Watson PLC (“*WTW*”), and their other restructuring advisors, undertook a deliberative process to design effective and appropriate compensation programs.

2. Accordingly, the Debtors, in consultation with their restructuring advisors, developed the KEIP² for 11 crucial senior level employees in an aggregate amount of up to approximately \$5.5 million.³ The KEIP is designed to incentivize 11 crucial senior level employees to achieve challenging financial, operational, and safety targets, and was subject to oversight, review, and approval by the independent⁴ compensation committee of the Cloud Peak Energy Inc. board of directors (the “*Independent Compensation Committee*”).⁵

3. The KEIP aligns the interests of the participants with those of the Debtors’ stakeholders—to maximize the value of the Debtors’ estates. As discussed in further detail herein, the Debtors believe that the KEIP is in the Debtors’ best interest and is otherwise justified by the facts and circumstances in these chapter 11 cases and should therefore be approved.

JURISDICTION AND VENUE

4. The United States Bankruptcy Court for the District of Delaware (the “*Court*”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A).

² The Debtors, in consultation with their restructuring advisors, also developed the Prepetition Retention Program, as set forth in more detail below.

³ Approximately \$833,400 of which was paid before the Petition Date on account of performance during the first fiscal quarter of 2019. By this Motion, the Debtors are seeking authorization to pay the remaining approximately \$4.6 million (including any true-up on account of the first fiscal quarter of 2019) in accordance with the terms of the KEIP as forth below.

⁴ Each director on the Independent Compensation Committee is “independent” as defined and required by the New York Stock Exchange.

⁵ As set forth more fully in the First Day Declaration, the Debtors also adopted a prepetition retention program for these 11 senior level employees.

The Debtors confirm their consent, pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), to the entry of a final order by the Court in connection with the Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The statutory bases for the relief requested herein are sections 105(a), 363(b), and 503(c)(3) of title 11 of the United States Code (the “**Bankruptcy Code**”).

BACKGROUND

7. Cloud Peak Energy Inc. owns and operates three surface coal mines in the Powder River Basin, the lowest cost major coal producing region in the United States. As one of the safest coal producers in the nation, Cloud Peak mines low sulfur, subbituminous coal and provides logistics supply services domestically and abroad.

8. On May 10, 2019 (the “**Petition Date**”), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no request for the appointment of a trustee or examiner has been made. On May 22, 2019, the United States Trustee for the District of Delaware appointed an official committee of unsecured creditors (the “**Committee**”) in these chapter 11 cases.

9. Additional information regarding the Debtors and these chapter 11 cases, including the Debtors’ business operations, capital structure, financial condition, and the reasons

for and objectives of these chapter 11 cases, is set forth in the *Declaration of Heath Hill in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 21] (the “**First Day Declaration**”), which is incorporated herein by reference.⁶

RELIEF REQUESTED

10. By this Motion, the Debtors seek entry of an order (the “**Order**”), substantially in the form attached hereto as **Exhibit A**, (i) approving the Debtors’ key employee incentive plan (the “**KEIP**”) and authorizing the Debtors to implement the KEIP for the specified participants, on a post-petition basis; (ii) allowing the Debtors’ payment obligations under the KEIP as administrative expenses of the Debtors’ estates; and (iii) granting related relief.

KEY EMPLOYEE INCENTIVE PLAN

A. The KEIP Participants.

11. The Debtors, with the assistance of WTW, and their other restructuring advisors, identified 11 senior level employees (the “**KEIP Participants**”), each of whom are critical to ensuring that the Debtors achieve their overall performance goals. The KEIP Participants are tasked with, among other things, leading the Debtors’ strategic business direction, implementing their business plan, managing operations, and guiding the Debtors into and through these chapter 11 cases. In short, the KEIP Participants are critical to the Debtors’ efforts to manage their business as debtors in possession and to successfully and expeditiously confirm a chapter 11 plan to maximize value for all stakeholders. A schedule of each KEIP Participant and such employee’s potential KEIP awards is attached hereto as **Exhibit C**.

⁶ Capitalized terms used but not otherwise defined in this Motion shall have the meaning set forth in the First Day Declaration.

B. The KEIP Metrics.*i. Award Opportunities.*

12. The Debtors, with the assistance of WTW and their other restructuring advisors, developed the KEIP for the KEIP Participants. The total maximum potential award opportunity under the KEIP will not exceed \$5.5 million in the aggregate (including the approximately \$833,400 that was paid prepetition on account of performance during the first fiscal quarter of 2019), an average of \$499,829 per person, and are to be paid to eligible KEIP Participants on a quarterly basis for each of the 2019 fiscal quarters. As set forth in the Gartrell Declaration, such award opportunities reflect WTW's benchmarking analysis versus the Debtors' market peers, as well as a review of incentive-based compensation programs approved in other chapter 11 cases. The KEIP's proposed award levels and performance targets were also subject to oversight, review, and approval by the Independent Compensation Committee.

13. The KEIP establishes a sliding scale of potential award opportunities based on the extent to which the Debtors succeed in realizing their adjusted earnings before interest, taxes, depreciation, and amortization ("**AEBITDA**")⁷ and safety (as set forth in detail below). The table below shows three levels of weighted performance targets which modify the KEIP awards to potentially be earned based on the metrics described herein: (i) the minimum level or "Threshold"; (ii) the "Target"; and (iii) the maximum or "Outstanding."

Award Modifier Weighting		
Threshold	Target	Outstanding
50%	100%	150%

14. The first three quarterly payments are capped at the "Target" level, based on the

⁷ The adjusted earnings before interest, taxes, depreciation, and amortization or "AEBITDA" is computed by the Debtors by taking its net income and adding interest taxes, and non-cash charges, such as depreciation, amortization, and depletion (EBITDA) and adjusting for accretion, which represents non-cash increases in asset retirement obligation liabilities resulting from the passage of time, and specifically identified items that the Debtors determined do not directly reflect their core operations.

year-to-date performance for each metric, with a true-up at the end of the fourth quarterly payment for “Outstanding” performance during the course of the year. The quarterly metrics are measured on a year-to-date basis—payments for the second quarter of 2019 are calculated based on the first six months of performance, payments for the third quarter of 2019 are calculated based on the first nine months of performance, and payments for the fourth quarter of 2019 are calculated based on the entire 12 months of 2019 performance, including any true-up based on the entire year’s performance which entitles a KEIP participant to receive greater than the 100% Target award, up to a maximum of 150%.

15. In the event that the Debtors’ realize one or more sales of substantially all of their assets during the third or fourth fiscal quarter of 2019, the KEIP Participants will be eligible to receive a *pro rata* award for Performance Metrics achieved as of the date of closing of such sale(s).

ii. *Performance Metrics.*

16. The KEIP is designed to incentivize the KEIP Participants to achieve challenging financial, operational, and safety targets through the pendency of the chapter 11 cases by using the following three performance metrics to determine award levels: (1) the AEBITDA of the Debtors’ domestic owned and operated mines (the “**O&O EBITDA**”); (2) the AEBITDA of the Debtors’ coal export business (the “**Export EBITDA**”); and (3) the Debtors’ workplace all injury frequency rate (the “**AIFR**,” and collectively with the O&O EBITDA and the Export EBITDA, the “**Performance Metrics**”).⁸

17. The O&O EBITDA measures the Debtors’ adjusted earnings before interest, taxes, depreciation, and amortization for its domestic owned and operated mines. The O&O EBITDA is weighted as 50% of the total award opportunity. Failure to reach the threshold O&O

⁸ These metrics are similar to those that were used in the Debtors’ prepetition incentive programs.

EBITDA results in no award on account of the O&O EBITDA. The O&O EBITDA performance goals are:

O&O EBITDA				
Award Modifiers	Q1 2019	Q2 2019	Q3 2019	Q4 2019
	Q1	YTD	YTD	Full Year
Threshold	(\$6.8 million)	\$0.5 million	\$8.1 million	\$17.1 million
Target	(\$1.8 million)	\$10.5 million	\$23.2 million	\$37.1 million
Outstanding	\$3.2 million	\$20.6 million	\$38.2 million	\$57.1 million

18. The Export EBITDA measures the Debtors' adjusted earnings before interest, taxes, depreciation, and amortization for its coal export business. The Export EBITDA is weighted as 30% of the total award opportunity. Failure to reach the threshold Export EBITDA results in no award on account of the Export EBITDA. The Export EBITDA performance goals are:

Export EBITDA				
Award Modifiers	Q1 2019	Q2 2019	Q3 2019	Q4 2019
	Q1	YTD	YTD	Full Year
Threshold	(\$3.7 million)	(\$10.9 million)	(\$18.6 million)	(\$26.3 million)
Target	(\$3.7 million)	(\$8.3 million)	(\$12.9 million)	(\$17.4 million)
Outstanding	(\$3.7 million)	(\$2.8 million)	(\$1.0 million)	\$0.8 million

19. The AIFR measures the Debtors' workplace all-injury frequency rate as calculated by the Debtors in accordance with the Mine Safety and Health Administration standards (*i.e.*, total number of employee injuries, multiplied by 200,000, divided by total hours worked by employees). The AIFR is weighted as 20% of the total award opportunity. Failure to reach the threshold AIFR results in no award on account of the AIFR. The AIFR performance goals are:

AIFR				
Award Modifiers	Q1	Q2	Q3	Q4
Threshold	0.36	0.36	0.36	0.36
Target	0.24	0.24	0.24	0.24
Outstanding	0.12	0.12	0.12	0.12

BASIS FOR RELIEF REQUESTED

20. The Court should grant the relief requested herein because (i) the implementation of the KEIP reflects a reasonable exercise of the Debtors' business judgment and, therefore, is

appropriate under section 363(b) of the Bankruptcy Code and (ii) the KEIP satisfies section 503(c) of the Bankruptcy Code because the KEIP is not a retention bonus due to its incentive-based structure and is justified by the facts and circumstances of these chapter 11 cases.

A. The Implementation of the KEIP Reflects an Exercise of the Debtors' Sound Business Judgment.

21. Section 363 of the Bankruptcy Code provides, in relevant part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Under section 363(b), courts require only that a debtor “show that a sound business purpose justifies such actions.” *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (citations omitted). “Compensation issues are normally governed by the business judgment standard, i.e., proof that there is a broad business purpose for an action.” *In re Glob. Home Prods., LLC*, 369 B.R. 778, 783–84 (Bankr. D. Del. 2007) (citing *Nyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996)). “The reasonable use of incentives and performance bonuses are considered the proper exercise of a debtor’s business judgment.” *Id.* at 784; *see also In re Velo Holdings, Inc.*, 472 B.R. 201, 212 (Bankr. S.D.N.Y. 2012) (“Courts have held that the ‘facts and circumstances’ language of section 503(c)(3) creates a standard no different than the business judgment standard under section 363(b).”). Moreover, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted).

22. The KEIP is the result of a thorough analysis undertaken by the Debtors, with the assistance of WTW and their other restructuring advisors. This program was further subject to

oversight, review, and approval by the Independent Compensation Committee. The award opportunities under the KEIP address the Debtors' business need to properly incentivize performance from KEIP Participants: the Debtors' business performance remains a critically important factor in maximizing estate value, and the Debtors believe that creating proper incentives to achieve this goal is a necessary means to this end. The KEIP Participants are the Debtors' business leaders; they possess skills, knowledge, and experience that are critical to the Debtors' ability to drive performance through improved operations and decreased costs. The KEIP, therefore, is structured to drive outperformance from these key individuals, providing incentives to surpass targeted performance at levels in a manner that will benefit all parties if such goals are achieved.

23. Absent the relief requested herein, KEIP Participants will be undercompensated and under-incentivized by a significant margin. In this regard, practically all of the Debtors' market peers utilize such incentives to drive performance—presumably because such peers recognize that market-based incentives are an important tool for driving outperformance by key personnel. In sum, the KEIP is an appropriate and market-based tool to drive business performance, and this program is the product of an independent process undertaken by the Debtors with market guidance from WTW and the Debtors' other restructuring professionals, as well as oversight, review, and approval by the Independent Compensation Committee.

24. Additionally, the Debtors submit that the payment levels under the KEIP are reasonable and were determined based on an independent analysis performed by WTW. The overall cost of the KEIP is consistent with similar programs implemented by market peers and reasonable in light of the size of the Debtors' estates and the benefit to be gained from a successful restructuring. The Debtors therefore submit that implementation of the KEIP reflects

a sound exercise of their business judgment.

B. The KEIP Satisfies Section 503(c) of the Bankruptcy Code.

i. The KEIP is an Incentive Plan.

25. Section 503(c)(1) of the Bankruptcy Code imposes substantial limitations on retention-based “insider” (as that term is defined in section 101(31) of the Bankruptcy Code) compensation programs, but section 503(c)(1) does not apply to performance-based incentive plans. *See In re Hawker Beechcraft, Inc.*, 479 B.R. 308, 313 (Bankr. S.D.N.Y. 2012). In determining whether an employee bonus plan is incentivizing, courts consider whether the plan is “designed to motivate insiders to rise to a challenge or merely report to work.” *Id.* This analysis further recognizes that all compensation, to some degree, has a retentive element. *See Glob. Home Prods.*, 369 B.R. at 786 (“The fact . . . that all compensation has a retention element does not reduce the Court’s conviction that [the] Debtors’ primary goal [is] to create value by motivating performance.”). Rather, the focus remains on whether the plan is, on the whole, truly incentivizing in nature by demanding a “stretch” before an award opportunity is achieved. *In re Dana Corp. (Dana II)*, 358 B.R. 567, 581 (Bankr. S.D.N.Y. 2006); *accord Glob. Home Prods.*, 369 B.R. at 785 (“The entire analysis changes if a bonus plan is not primarily motivated to retain personnel or is not in the nature of severance.”).

26. The KEIP is an incentive-based compensation program. The KEIP does not contain retention-based components, as participants are not paid merely for maintaining their employment for a certain time period. Rather, award opportunities are available only if the difficult-to-reach Performance Metrics are achieved.

- ii. *The KEIP Is Justified by the Facts and Circumstances of the Chapter 11 Cases per Section 503(c)(3) of the Bankruptcy Code.*

27. Under section 503(c)(3) of the Bankruptcy Code, courts consider several factors in determining whether a particular program is justified under the facts and circumstances of a particular case, including: (i) whether the plan is calculated to achieve the desired performance; (ii) whether the cost of the plan is reasonable in the context of a debtor's assets, liabilities, and earning potential; (iii) whether the scope of the plan is fair and reasonable or discriminates unfairly among employees; (iv) whether the plan is consistent with industry standards; (v) whether the debtor performed due diligence in investigating the need for the plan; and (vi) whether the debtor received independent advice in performing due diligence with respect to creating and authorizing the plan. *See Glob. Home Prods.*, 369 B.R. at 786; *Dana II*, 358 B.R. at 576–77. No single factor is dispositive, and the Court has discretion to weigh each of these factors based on the specific facts and circumstances before it. *See In re AMR Corp.*, 490 B.R. 158, 166 (Bankr. S.D.N.Y. 2013) (“[S]ection 503(c)(3) gives the court discretion as to bonus and incentive plans, which are not primarily motivated by retention or in the nature of severance.” (quoting *Dana II*, 358 B.R. at 166)).

28. In this case, the Debtors respectfully submit that consideration of such factors supports approval of the KEIP:

- **The KEIP is Structured to Achieve the Desired Performance.** The KEIP incentivizes the KEIP Participants to achieve value-driving financial targets. As described, the Performance Metrics will require substantial outperformance from the KEIP Participants. The Debtors submit that the KEIP Participants “simply showing up” will not result in achievement of the Performance Metrics, and, therefore, no award will be earned without substantial outperformance by the KEIP Participants.
- **The Debtors Developed the KEIP with Independent Advice and Oversight.** The Debtors actively sought input from their legal and financial advisors during the KEIP development process. This process included WTW’s specific compensation-related expertise and the oversight, review, and approval by the

Independent Compensation Committee.

- **The Debtors Were Duly Diligent.** The Debtors—with the assistance of WTW, their other restructuring advisors, and the Independent Compensation Committee—performed considerable diligence on their employees’ existing compensation levels (both with and without some form of incentive-based compensation) and market comparables.
- **The Costs of the KEIP is Reasonable.** The KEIP will cost the Debtors a maximum of approximately \$5.5 million, assuming each Outstanding level is actually achieved for each Performance Metric. By comparison, the Debtors’ prepetition balance sheet includes more than \$346 million of funded debt.
 - At the Outstanding level, the KEIP’s aggregate approximate \$5.5 million award reflects approximately 9.3% of the requisite Outstanding O&O EBITDA performance of \$57.1 million. Further, to earn Outstanding level KEIP Awards, the Debtors must achieve the requisite Outstanding O&O EBITDA *and* the requisite Outstanding Export EBITDA and AIFR.
 - At the Target level, the KEIP’s aggregate approximate \$3.7 million award reflects approximately 9.9% of the requisite Target O&O EBITDA performance of \$37.1 million. Further, to earn Target level KEIP Awards, the Debtors must achieve the requisite Target O&O EBITDA *and* the requisite Target Export EBITDA and AIFR.
 - At the Threshold level, the KEIP’s aggregate approximate \$1.8 million award reflects approximately 10.5% of the requisite Threshold O&O EBITDA performance of \$17.1 million.

29. The KEIP’s proposed cost is a reasonable, market-based approach that is consistent with award opportunities approved in comparable chapter 11 cases. Accordingly, the Debtors respectfully submit that section 503(c)(3) is satisfied.

BANKRUPTCY RULE 6004(a) AND 6004(h)

30. To implement the foregoing successfully, the Debtors request that the Court find that notice of the Motion is adequate under Bankruptcy Rule 6004(a), and seek a waiver of the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

NOTICE

31. Notice of this Motion has been provided by delivery to: (a) the Office of the

United States Trustee for the District of Delaware; (b) the indenture trustee under the Debtors' Secured Notes; (c) Davis Polk & Wardwell, as counsel to the DIP Lenders and the ad hoc group of Prepetition Secured Noteholders; (d) the indenture trustee under the Debtors' Unsecured Notes; (e) proposed counsel to the Committee; (f) those persons who have formally appeared in these chapter 11 cases and requested service pursuant to Bankruptcy Rule 2002; (g) the Securities and Exchange Commission; (h) the Internal Revenue Service; and (i) all other applicable government agencies to the extent required by the Bankruptcy Rules or the Local Rules. In light of the nature of the relief requested in this Motion, the Debtors submit that no further notice is necessary.

NO PRIOR REQUEST

32. No prior motion for the relief requested herein has been made to this Court or any other court.

The Debtors respectfully request that the Court enter the Order, substantially in the form attached hereto as **Exhibit A**, and grant them such other and further relief to which the Debtors may be justly entitled.

Dated: June 11, 2019
Wilmington, Delaware

/s/ David T. Queroli

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

CLOUD PEAK ENERGY INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 19 – 11047 (KG)

(Jointly Administered)

Obj. Deadline: June 25, 2019 at 5:00 p.m. (ET)

Hearing Date: July 2, 2019 at 2:00 p.m. (ET)

NOTICE OF MOTION AND HEARING

PLEASE TAKE NOTICE that, on June 11, 2019, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) filed the *Motion of Debtors for Entry of an Order (I) Approving the Debtors’ Key Employee Incentive Plan and (II) Granting Related Relief* (the “**Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

PLEASE TAKE FURTHER NOTICE that any responses or objections to the relief requested in the Motion, if any, must be in writing and filed with the Clerk of the Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, on or before **June 25, 2019 at 5:00 p.m. (prevailing Eastern Time)**.

The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers are: Antelope Coal LLC (8952); Arrowhead I LLC (3024); Arrowhead II LLC (2098); Arrowhead III LLC (9696); Big Metal Coal Co. LLC (0200); Caballo Rojo LLC (9409); Caballo Rojo Holdings LLC (4824); Cloud Peak Energy Finance Corp. (4674); Cloud Peak Energy Inc. (8162); Cloud Peak Energy Logistics LLC (7973); Cloud Peak Energy Logistics I LLC (3370); Cloud Peak Energy Resources LLC (3917); Cloud Peak Energy Services Company (9797); Cordero Mining LLC (6991); Cordero Mining Holdings LLC (4837); Cordero Oil and Gas LLC (5726); Kennecott Coal Sales LLC (0466); NERCO LLC (3907); NERCO Coal LLC (7859); NERCO Coal Sales LLC (7134); Prospect Land and Development LLC (6404); Resource Development LLC (7027); Sequatchie Valley Coal Corporation (9113); Spring Creek Coal LLC (8948); Western Minerals LLC (3201); Youngs Creek Holdings I LLC (3481); Youngs Creek Holdings II LLC (9722); Youngs Creek Mining Company, LLC (5734). The location of the Debtors' service address is: 385 Interlocken Crescent, Suite 400, Broomfield, Colorado 80021.

PLEASE TAKE FURTHER NOTICE that if any objections to the Motion are received, the Motion and such objections shall be considered at a hearing before The Honorable Kevin Gross, United States Bankruptcy Judge for the District of Delaware, at the Bankruptcy Court, 824 N. Market Street, 6th Floor, Courtroom No. 3, Wilmington, Delaware 19801 on **July 2, 2019 at 2:00 p.m. (prevailing Eastern Time).**

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

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Dated: June 11, 2019
Wilmington, Delaware

/s/ David T. Queroli

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EXHIBIT A

PROPOSED ORDER

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re)	Chapter 11
CLOUD PEAK ENERGY INC., <i>et al.</i> ,)	Case No. 19 – 11047 (KG)
Debtors. ¹)	(Jointly Administered)
)	Re: Docket No. ____

**ORDER (I) APPROVING THE DEBTORS' KEY
EMPLOYEE INCENTIVE PLAN (II) GRANTING RELATED RELIEF**

Upon the Motion² filed by the above-referenced debtors and debtors in possession (collectively, the “**Debtors**”) for entry of an order (the “**Order**”) (i) approving the Debtors’ key employee incentive plan (the “**KEIP**”); (ii) authorizing the Debtors to implement the KEIP for the specified participants; (iii) allowing the Debtors’ payment obligations thereunder as administrative expenses of these estates; and (iv) granting related relief, all as more fully set forth in the Motion and in the First Day Declaration; and the Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the

¹ The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers are: Antelope Coal LLC (8952); Arrowhead I LLC (3024); Arrowhead II LLC (2098); Arrowhead III LLC (9696); Big Metal Coal Co. LLC (0200); Caballo Rojo LLC (9409); Caballo Rojo Holdings LLC (4824); Cloud Peak Energy Finance Corp. (4674); Cloud Peak Energy Inc. (8162); Cloud Peak Energy Logistics LLC (7973); Cloud Peak Energy Logistics I LLC (3370); Cloud Peak Energy Resources LLC (3917); Cloud Peak Energy Services Company (9797); Cordero Mining LLC (6991); Cordero Mining Holdings LLC (4837); Cordero Oil and Gas LLC (5726); Kennecott Coal Sales LLC (0466); NERCO LLC (3907); NERCO Coal LLC (7859); NERCO Coal Sales LLC (7134); Prospect Land and Development LLC (6404); Resource Development LLC (7027); Sequatchie Valley Coal Corporation (9113); Spring Creek Coal LLC (8948); Western Minerals LLC (3201); Youngs Creek Holdings I LLC (3481); Youngs Creek Holdings II LLC (9722); Youngs Creek Mining Company, LLC (5734). The location of the Debtors’ service address is: 385 Interlocken Crescent, Suite 400, Broomfield, Colorado 80021.

² Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the Motion.

United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having reviewed the Motion and the Gartrell Declaration; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors and their respective estates, creditors, and other parties in interest; and the Court having found that proper and adequate notice of the Motion and hearing thereon has been given and that no other or further notice is necessary; and the Court having held a hearing to consider the relief requested in the Motion; and the Court having found that good and sufficient cause exists for the granting of the relief requested in the Motion after having given due deliberation upon the Motion and all of the proceedings had before the Court in connection with the Motion, it is **HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.
2. Any objections to the Motion not resolved or otherwise withdrawn are **OVERRULED**.
3. The KEIP as set forth in the Motion is hereby approved.
4. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.
5. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in the Motion or this Order or any payment made pursuant to this order shall constitute, nor is it intended to be, an admission as to the validity or priority of any claim or lien against the Debtors, a waiver of the Debtors' rights to subsequently dispute such claim or lien, or the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

6. Notice of the Motion is adequate under Bankruptcy Rule 6004(a).
7. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon entry of this Order.
8. The Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

EXHIBIT B

GARTRELL DECLARATION

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

CLOUD PEAK ENERGY INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 19 – 11047 (KG)

(Jointly Administered)

**DECLARATION OF
JOSEPHINE GARTRELL IN SUPPORT OF DEBTORS’
MOTIONS FOR ENTRY OF ORDERS (I) APPROVING THE DEBTORS’
KEY EMPLOYEE INCENTIVE PLAN AND (II) GRANTING RELATED RELIEF**

I, Josephine Gartrell, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that to the best of my knowledge, information and belief:

1. I am a Director in the talent and rewards practice of Willis Towers Watson PLC (“*Willis Towers Watson*”). Willis Towers Watson was engaged to provide compensation consulting services to Cloud Peak Energy, Inc., one of the Debtors in these chapter 11 cases. I am familiar with the pre- and post- petition structure of the Debtors’ compensation programs, including the Debtors’ proposed key employee incentive plan (the “*KEIP*”).

2. I submit this Declaration on behalf of Willis Towers Watson in support of the *Motion of Debtors for Entry of an Order (I) Approving the Debtors' Key Employee Incentive*

The Debtors in these chapter 11 cases and the last four digits of their respective federal tax identification numbers are: Antelope Coal LLC (8952); Arrowhead I LLC (3024); Arrowhead II LLC (2098); Arrowhead III LLC (9696); Big Metal Coal Co. LLC (0200); Caballo Rojo LLC (9409); Caballo Rojo Holdings LLC (4824); Cloud Peak Energy Finance Corp. (4674); Cloud Peak Energy Inc. (8162); Cloud Peak Energy Logistics LLC (7973); Cloud Peak Energy Logistics I LLC (3370); Cloud Peak Energy Resources LLC (3917); Cloud Peak Energy Services Company (9797); Cordero Mining LLC (6991); Cordero Mining Holdings LLC (4837); Cordero Oil and Gas LLC (5726); Kennecott Coal Sales LLC (0466); NERCO LLC (3907); NERCO Coal LLC (7859); NERCO Coal Sales LLC (7134); Prospect Land and Development LLC (6404); Resource Development LLC (7027); Sequatchie Valley Coal Corporation (9113); Spring Creek Coal LLC (8948); Western Minerals LLC (3201); Youngs Creek Holdings I LLC (3481); Youngs Creek Holdings II LLC (9722); Youngs Creek Mining Company, LLC (5734). The location of the Debtors' service address is: 385 Interlocken Crescent, Suite 400, Broomfield, Colorado 80021.

Plan and (II) Granting Related Relief (the “**KEIP Motion**”).² Except as otherwise indicated, I have personal knowledge of all facts in this Declaration, based on my review of the Debtors’ business and compensation practices, my research into compensation practices for companies in the energy industry, my research into the designs of incentive-based plans approved in recent chapter 11 proceedings and my significant experience in developing such programs, and information supplied to me by members of the Debtors’ management team and the Debtors’ other advisors. For the reasons described below, it is my opinion that the KEIP is reasonable and generally consistent with market practice both for companies in the energy industry and those companies that have sought relief under chapter 11. If called upon to testify, I could and would testify competently to the facts and opinions set forth in this Declaration.

BACKGROUND AND QUALIFICATIONS

3. I received my Juris Doctor from University of San Diego School of Law in 1998, graduating Magna Cum Laude and Order of the Coif, and my bachelors of arts in international business from San Diego State University in 1994. After working at Gibson Dunn as an associate in the corporate practice, Pillsbury Winthrop as an associate in the executive compensation practice, and The Loftin Firm, P.C where I was a partner and then of counsel in the corporate practice, I became an executive compensation consultant at the Hay Group LLC in 2014. I joined Willis Towers Watson in 2016 where I have been continuously employed ever since.

4. Willis Towers Watson is an international professional services firm that offers a wide variety of services to public and private clients, including expert analysis of executive and management compensation. Willis Towers Watson designs and delivers solutions that manage

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the KEIP Motion, as applicable.

risk, optimize benefits, cultivate talent, and expand the power of capital to protect and strengthen institutions and individuals. Willis Towers Watson focuses on four key business segments: corporate risk and brokering; human capital and benefits; exchange solutions; and investment, risk, and reinsurance.

5. My responsibilities at Willis Towers Watson have primarily involved consulting to for-profit companies and not-for profit organizations, specifically with regard to executive compensation. I routinely work with public and private companies in various industries regarding compensation philosophy, pay competitiveness, incentive plan design, and other compensation-related analyses and have participated in the development and design of hundreds of management and employee incentive plans for companies in and outside of bankruptcy.

6. I am highly experienced in executive, management, and employee compensation with over 20 years of experience in the field. During my tenure at Willis Towers Watson, I have worked closely with a range of companies undergoing a financial restructuring in developing a variety of pre-petition and post-petition compensation arrangements, including compensation plans and programs for senior executive and non-executive employees. Specifically, I have led or co-led the review and design of key employee incentive plans, key employee retention plans, and other similar plans in a number of chapter 11 cases, including *Aegean Marine Petroleum Network Inc., et al.*, Case No. 18-13374 (MEW), Bankr. S.D.N.Y.; *In re ATD Corporation, et al.*, Case No. 18-12221 (KJC), Bankr. D. Del.; *In re Claire's Stores Inc., et al.*, Case No. 18-10584 (MFW), Bankr. D. Del.; *In re FULLBEAUTY Brands Holdings Corp., et al.*, Case No. 19-22185 (RDD), Bankr. S.D.N.Y.; *In re Parker Drilling Company, et al.*, Case No. 18-36958 (MI), Bankr. S.D. Tex.; *In re Westmoreland Coal Company, et al.*, Case No. 18-35672 (DRJ), Bankr. S.D. Tex.

7. Since Willis Towers Watson was retained by the Debtors, I, in coordination with my team at Willis Towers Watson, have familiarized myself with the Debtors' operations, business goals and compensation practices. As part of this process, Willis Towers Watson gathered and analyzed relevant market compensation data, including salaries, short-term compensation, and long-term compensation opportunities offered by the Debtors' peer group and other companies in chapter 11 bankruptcy. Among other things, my team and I provided input and advice on the design, structure, and total cost of the KEIP for reasonableness. In connection with this process, Willis Towers Watson worked closely with the Debtors' senior management team and its other advisors. Additionally, Willis Towers Watson leveraged its own experience designing programs for similarly situated companies, both inside and outside of chapter 11 bankruptcy. The KEIP reflects the input and guidance provided by myself and my colleagues at Willis Towers Watson.

8. My analysis of the reasonableness of the KEIP was presented to the Debtors' senior management. Importantly, the KEIP was subject to oversight, review, and approval by the independent compensation committee of the Cloud Peak Energy Inc. board of directors (the "*Independent Compensation Committee*").³ The primary goal in the course of these interactions with the Debtors and senior management was to develop an independent assessment of the Debtors' KEIP that drew directly upon relevant market data and my experience in designing comparable programs for similarly-situated companies.

9. The Debtors commenced these chapter 11 cases to maximize the value of the Debtors' estates for their stakeholders. Recognizing that employee performance will play a critical role in achieving this objective, the Debtors in conjunction with Willis Towers Watson,

³ I understand that each director on the Independent Compensation Committee is "independent" as defined and required by the New York Stock Exchange

and their other restructuring advisors, undertook a deliberative process to design effective and appropriate compensation programs. The culmination of that work includes the KEIP, which is designed to incentivize 11 crucial senior level employees to achieve challenging financial, operational, and safety targets that were set by the Debtors following Willis Towers Watson's advice regarding selection of metrics. Prior to commencing chapter 11, Cloud Peak maintained an annual bonus plan, as well as a long-term plan that granted equity to executives and select senior level employees. The plans that were in place, were similar in design and structure to plans in place at other, publicly-traded, comparable companies. The proposed KEIP is, in many ways, an extension of the pay-for-performance standard that was established through the prepetition annual and long-term plans.

KEY EMPLOYEE INCENTIVE PLAN**A. Overview of the KEIP.**

10. The KEIP is designed to incentivize 11 crucial senior level employees (the “**KEIP Participants**”)—identified by the Debtors’ management team with the advice of its advisors—to achieve targeted business performance during these chapter 11 cases.

11. The KEIP establishes a sliding scale of potential award opportunities based on the extent to which the Debtors succeed in realizing their adjusted earnings before interest, taxes, depreciation, and amortization (“**AEBITDA**”)⁴ and safety (as set forth in detail below). The table below shows three levels of weighted performance targets which modify the KEIP awards to potentially be earned based on the metrics described herein: (i) the minimum level or “Threshold”; (ii) the “Target”; and (iii) the maximum or “Outstanding.”

Award Modifier Weighting		
Threshold	Target	Outstanding
50%	100%	150%

12. The total maximum potential award opportunity under the KEIP will not exceed \$5.5 million in the aggregate (including the approximately \$833,400 that was paid prepetition on account of performance during the first fiscal quarter of 2019), an average of \$499,829 per person, and are to be paid to eligible KEIP Participants on a quarterly basis for each of the 2019 fiscal quarters.

⁴ The adjusted earnings before interest, taxes, depreciation, and amortization or “AEBITDA” is computed by the Debtors by taking its net income and adding interest taxes, and non-cash charges, such as depreciation, amortization, and depletion (EBITDA) and adjusting for accretion, which represents non-cash increases in asset retirement obligation liabilities resulting from the passage of time, and specifically identified items that the Debtors determined do not directly reflect their core operations.

13. The titles of the individual KEIP Participants and their respective proposed award opportunities are identified in the table below.

Performance Payouts by KEIP Participant							
KEIP Participants	Annual Base Salary	Threshold ⁵		Target		Outstanding	
		Annualized Award	Percentage of Annual Salary	Annualized Award	Percentage of Annual Salary	Annualized Award	Percentage of Annual Salary
President and CEO	\$765,003	\$573,752	75%	\$1,147,505	150%	\$1,721,257	225%
Executive Vice President and Chief Operating Officer	\$400,000	\$230,000	58%	\$460,000	115%	\$690,000	173%
Executive Vice President and Chief Financial Officer	\$375,003	\$215,627	58%	\$431,253	115%	\$646,880	173%
Executive Vice President, General Counsel, and Secretary	\$360,006	\$207,003	58%	\$414,007	115%	\$621,010	173%
Senior Vice President, Marketing and Business Development	\$310,003	\$155,002	50%	\$310,003	100%	\$465,005	150%
Senior Vice President, Human Resources	\$275,000	\$137,500	50%	\$275,000	100%	\$412,500	150%
Vice President and Chief Accounting Officer	\$253,775	\$76,133	30%	\$152,265	60%	\$228,398	90%
Vice President and Tax Counsel	\$238,968	\$71,690	30%	\$143,381	60%	\$215,071	90%
Vice President of Finance and Treasurer	\$236,383	\$70,915	30%	\$141,830	60%	\$212,745	90%
General Manager	\$220,000	\$52,250	~24%	\$104,500	~48%	\$156,750	~71%
General Manager	\$180,352	\$42,834	~24%	\$85,667	~48%	\$128,501	~71%
Total	\$3,614,493	\$1,832,705	-	\$3,665,411	-	\$5,498,116	-

B. Performance Metrics.

14. The KEIP is purely incentive-based, conditioning any KEIP award on the KEIP Participants meeting financial and safety performance metrics, thus ensuring that the KEIP Participants are properly incentivized to work toward a value-maximizing restructuring transaction.

15. The proposed KEIP is designed to incentivize the KEIP Participants to achieve challenging financial, and safety targets through the pendency of these chapter 11 cases by using

⁵ Assumes the same performance target in each Award Metric. If differing performance targets are achieved among the Award Metrics then the Quarterly Award will be weighted between the Award Modifiers as set forth below.

the following three performance metrics to determine award levels: (1) the AEBITDA of the Debtors' domestic owned and operated mines (the "***O&O EBITDA***"); (2) the AEBITDA of the Debtors' coal export business (the "***Export EBITDA***"); and (3) the Debtors' workplace all injury frequency rate (the "***AIFR***," and collectively with the O&O EBITDA and the Export EBITDA, the "***Performance Metrics***").⁶ In the process of establishing metrics and performance targets, my team and I provided data and our opinion on the reasonableness of the metrics chosen, but did not provide advice on setting the specific targets for each metric. We are providing KEIP targets within this document to assist in the explanation of the KEIP.

16. The O&O EBITDA measures the Debtors' adjusted earnings before interest, taxes, depreciation, and amortization for its domestic owned and operated mines. The O&O EBITDA is weighted as 50% of the total award opportunity. Failure to reach the threshold O&O EBITDA results in no award on account of the O&O EBITDA. The O&O EBITDA performance goals are:

Award Modifiers	O&O EBITDA			
	Q1 2019	Q2 2019	Q3 2019	Q4 2019
	Q1	YTD	YTD	Full Year
Threshold	(\$6.8 million)	\$0.5 million	\$8.1 million	\$17.1 million
Target	(\$1.8 million)	\$10.5 million	\$23.2 million	\$37.1 million
Outstanding	\$3.2 million	\$20.6 million	\$38.2 million	\$57.1 million

17. The Export EBITDA measures the Debtors' adjusted earnings before interest, taxes, depreciation, and amortization for its coal export business. The Export EBITDA is weighted as 30% of the total award opportunity. Failure to reach the threshold Export EBITDA results in no award on account of the Export EBITDA. The Export EBITDA performance goals are:

⁶ These metrics are similar to those that were used in the Debtors' prepetition incentive programs.

Export EBITDA				
Award Modifiers	Q1 2019	Q2 2019	Q3 2019	Q4 2019
	Q1	YTD	YTD	Full Year
Threshold	(\$3.7 million)	(\$10.9 million)	(\$18.6 million)	(\$26.3 million)
Target	(\$3.7 million)	(\$8.3 million)	(\$12.9 million)	(\$17.4 million)
Outstanding	(\$3.7 million)	(\$2.8 million)	(\$1.0 million)	\$0.8 million

18. The AIFR measures the Debtors' workplace all-injury frequency rate as calculated by the Debtors in accordance with the Mine Safety and Health Administration standards (*i.e.*, total number of employee injuries, multiplied by 200,000, divided by total hours worked by employees). The AIFR is weighted as 20% of the total award opportunity. Failure to reach the threshold AIFR results in no award on account of the AIFR. The AIFR performance goals are:

AIFR				
Award Modifiers	Q1	Q2	Q3	Q4
Threshold	0.36	0.36	0.36	0.36
Target	0.24	0.24	0.24	0.24
Outstanding	0.12	0.12	0.12	0.12

19. The KEIP establishes three levels of potential award opportunities based on the extent to which the Debtors succeed in realizing their AEBITDA and safety performance goals. The table below shows the three levels of potential payout opportunities—threshold, target, and outstanding.

Payout Range			
Below Threshold	Threshold	Target	Outstanding
0%	50%	100%	150%

20. The first three quarterly payments will be capped at the "Target" level, with a true-up at the end of the fourth quarterly payment for "Outstanding" performance during the course of the year.

21. In the event that the Debtors' realize one or more sales of substantially all of their assets during the third or fourth fiscal quarter of 2019, the KEIP participants will be eligible to receive a *pro rata* award for Performance Metrics achieved as of the date of closing of such sales(s).

C. Evaluation of the KEIP.

22. In assessing the reasonableness of the KEIP, I worked with my team to analyze competitive target total direct compensation, a standard benchmark that includes base salary, short term incentives, and long term incentives, for all KEIP Participants.

23. As my primary reference point for the competitiveness of compensation of all KEIP participants, my team and I analyzed the compensation opportunities of executives at relevant market comparators in the Energy Industry (as defined below). This analysis was completed using two reference sources. For the Debtors' four highest compensated KEIP Participants, Willis Towers Watson selected a set of 13 comparable companies⁷ operating in the Energy Industry (collectively, the "*Energy Peers*") in light of a number of factors, including revenue size, scope of operations and industry relevance. The data for these companies was derived from the most recent proxy statements. Based on my extensive experience in developing compensation peer groups, and my familiarity with the Debtors' operations in particular, I believe the Energy Peers are reasonably similarly situated entities in terms of operations and activities, and may also compete with the Debtors for executive talent.

24. Next, my team and I developed competitive target total direct compensation benchmarks based on the most recent proxy disclosures from each Energy Peer, where available. Then, my team and I matched the Debtors' four highest compensated KEIP Participants to executives at the Energy Peers with similar positions and/or titles (e.g., Chief Operating Officer), as compensation data is only disclosed in proxy statements for the Chief Executive Officer, Chief Financial Officer and the next three highest paid executive officers.

⁷ The Energy Peers are: Alliance Resource Partners, L.P.; Arch Coal, Inc.; Bonanza Creek Energy, Inc.; Consol Energy, Inc.; Contura Energy, Inc.; Eclipse Resources Corporation; Foresight Energy LP; Hallador Energy Company; Matador Resources Company; Natural Resource Partner L.P.; SandRidge Energy, Inc.; SunCoke Energy, Inc.; and Warrior Met Coal, Inc.

25. For positions not covered by proxy disclosure, my team and I matched the Debtors' remaining KEIP Participants to survey benchmarks at companies in the 2018 Willis Towers Watson U.S. Energy Services Executive Compensation Survey Report and the 2018 Willis Towers Watson U.S. General Industry Executive Compensation Survey Report, based on my understanding of each participant's job duties and responsibilities within the Debtors' organization. For each survey benchmark, my team and I developed, where possible, revenue adjusted survey data for target total direct compensation (the "***Industry Survey Data***") (the survey data and the Energy Peer data, may sometimes collectively be referred to herein as the "***Energy Industry***"). I compared the Debtors' threshold, target, and outstanding total direct compensation opportunities (reflecting adjusted base salary and the threshold and outstanding KEIP opportunities) for the KEIP Participants to target total direct compensation data for equivalent positions from the Energy Industry.

26. If the Debtors do not receive approval from the Court to implement the KEIP, total direct compensation (currently representing *only* adjusted base salaries) for the KEIP Participants in aggregate would fall 57% below the 25th percentile of target total direct compensation of the Energy Industry and 72% below the median of target total direct compensation of the Energy Industry. In other words, KEIP Participants will be materially undercompensated versus comparable executives at similarly sized organizations in the Energy Industry. These circumstances could significantly undermine the Debtors' ability to motivate their senior management to achieve desired business objectives. It is also my experience that it would be highly uncommon for an entity comparable to the Debtors' size and scope to fail to provide some form of short term, cash-based incentive opportunity. The KEIP is, in part, designed to address some of this shortfall.

27. My team and I then compared the Debtor's annualized threshold, target, and outstanding total direct compensation (reflecting the sum of base salary, annualized values of the Prepetition Retention Award⁸), and the threshold, target, and outstanding KEIP opportunities) for the KEIP Participants to target total direct compensation data for equivalent positions from the Energy Industry data. The following chart summarizes these outcomes:

Total Direct Compensation for KEIP Participants			
TDC Outcome	Relation to 25 th Percentile of Market TDC	Relation to 50 th Percentile of Market TDC	Relation to 75 th Percentile of Market TDC
Base Salaries and Prepetition Retention Award Plus <i>Threshold</i> KEIP Payout	41% above	3% below	23% below
Base Salaries and Prepetition Retention Award Plus <i>Target</i> KEIP Payout	3% below	14% above	9% below
Base Salaries and Prepetition Retention Award Plus <i>Outstanding</i> KEIP Payout	91% above	31% above	5% above

28. Based on the results of these benchmarking analyses, and my experience in other incentive compensation arrangements implemented in chapter 11 cases, I believe the KEIP and the KEIP Participants' potential total direct compensation levels are reasonable in light of competitive market practice for companies like the Debtors that operate in the Energy Industry. Critically, the absence of an incentive opportunity for the KEIP Participants significantly undermines the current competitiveness of the Debtors' compensation structure, which in turn could negatively impact the Debtors' ability to motivate current management to achieve desired business objectives.

29. To assess the reasonableness of the design of the KEIP, I analyzed the annual incentive plans of the aforementioned Energy Peers, as well as 10 comparable incentive plans from chapter 11 cases of companies that filed petitions from 2016 to 2017 with annual revenues

⁸ In February 2019, the Debtors paid to the KEIP Participants a one-time cash award in an aggregate amount of approximately \$3,665,000 (the "*Prepetition Retention Award*") with amounts ranging from approximately \$86,000 to approximately \$1.2 million per recipient. The Prepetition Retention Award is subject to claw-back if within the earlier of one year from the date of the Prepetition Retention Award and the consummation of a plan of reorganization, the Debtors terminate the recipient's employment for cause or if the participant voluntarily departs without good reason. The Prepetition Retention Award, including the award amounts and structure, were subject to oversight, review, and approval by the Independent Compensation Committee.

ranging from \$408 million to \$1.7 billion (the “*Comparable KEIPs*”)⁹. In conducting this analysis, I also relied upon my significant consulting experience in the analysis and design of incentive plans generally at other companies.

30. The general structure of the KEIP comports with the findings of my review of incentive plans of the Comparable KEIPs. I would note the following key observations:

- 78% of Energy Peers and 30% of Comparable KEIPs used profit-based metrics within their short-term, performance-based plans;
- 56% of Energy Peers used Health/Safety metrics within their annual incentive plans;
- KEIP Participants are usually limited to senior management with a median number of participants being nine for the Comparable KEIPs;
- the proposed number of KEIP Participants fits within the observed range of market practice (range of participants is four to 19 within the Comparable KEIPs);
- the concept of threshold and outstanding payout levels are reasonable and common design features;
- most restructuring companies (100% of Comparable KEIPs) use non-annual performance metrics in an incentive plan and quarterly performance periods are common (50% of Comparable KEIPs); with respect to the Comparable KEIPs, 50%–133% of target was the median payout range for threshold to maximum performance;
- with respect to Energy Peers, 50%–200% of target was the median payout range for threshold to maximum performance.

To assess the reasonableness of the cost of the KEIP, my team and I reviewed the proposed target and maximum cost of the KEIP expressed in the following three ways: (i) as an aggregate

⁹ The Comparable KEIPs are from the following chapter 11 cases: *In re GenOn Energy, Inc., et al.*, Case No. 17-33695 (DRJ), Bankr. S.D. Tex.; *In re Linn Energy, LLC, et al.*, Case No. 16-60040 (DRJ), Bankr. S.D. Tex.; *In re Noranda Aluminum, Inc., et al.*, Case No. 16-10083 (BSS), Bankr. E.D. Mo.; *In re Pacific Drilling S.A., et al.*, Case No. 17-13193 (MEW), Bankr. S.D.N.Y.; *In re Real Industry, Inc., et al.*, Case No. 17-12464 (KJC), Bankr. D. Del.; *In re Ezra Holdings Limited*, Case No. 17-22405 (RDD), Bankr. S.D.N.Y.; *In re CJ Holding Co., et al.*, Case No. 16-33590 (DRJ), Bankr. S.D. Tex.; *In re Breitburn Energy Partners LP, et al.*, Case No. 16-11390 (SMB), Bankr. S.D.N.Y.; *In re Ultra Petroleum Corp., et al.*, Case No. 16-32202 (MI), Bankr. S.D. Tex.; and *Velocity Holding Company, Inc., et al.*, Case No. 17-12442 (KJC), Bankr. D. Del.

amount, (ii) as a percentage of the Debtors' revenue, and (iii) as an aggregate cost per participant relative to the target costs of approved Comparable KEIPs. This comparison can be observed in the table below:

Market Positioning of Cloud Peak's KEIP					
Aggregate KEIP Cost vs Market	Cloud Peak Target Performance and Payout	Cloud Peak Outstanding Performance and Payout	Market 25 th Percentile	Market Median	Market 75 th Percentile
\$000s	\$3,665	\$5,498	\$4,031	\$8,277	\$8,575
Percentage of Revenue	0.41%	0.61%	0.47%	0.98%	1.28%
Aggregate Cost per KEIP Participant	\$333	\$500	\$122	\$735	\$1,722

D. Reasonableness of the KEIP.

31. For these reasons, and based on my experience with incentive-based compensation programs employed by companies in chapter 11, I believe the design, structure, cost and individual opportunities available under the Debtors' KEIP is reasonable and consistent with market practice.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 11, 2019

/s/ Josephine Gartrell

Josephine Gartrell

Director

Willis Towers Watson PLC

EXHIBIT C

POTENTIAL KEIP AWARDS

Performance Payouts by KEIP Participant							
KEIP Participants	Annual Base Salary	Threshold ¹		Target		Outstanding	
		Annualized Award	Percentage of Annual Salary	Annualized Award	Percentage of Annual Salary	Annualized Award	Percentage of Annual Salary
President and CEO	\$765,003	\$573,752	75%	\$1,147,505	150%	\$1,721,257	225%
Executive Vice President and Chief Operating Officer	\$400,000	\$230,000	58%	\$460,000	115%	\$690,000	173%
Executive Vice President and Chief Financial Officer	\$375,003	\$215,627	58%	\$431,253	115%	\$646,880	173%
Executive Vice President, General Counsel, and Secretary	\$360,006	\$207,003	58%	\$414,007	115%	\$621,010	173%
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Vice President and Chief Accounting Officer	\$253,775	\$76,133	30%	\$152,265	60%	\$228,398	90%
Vice President and Tax Counsel	\$238,968	\$71,690	30%	\$143,381	60%	\$215,071	90%
Vice President of Finance and Treasurer	\$236,383	\$70,915	30%	\$141,830	60%	\$212,745	90%
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Total	\$3,614,493	\$1,832,705	-	\$3,665,411	-	\$5,498,116	-

¹ Assumes the same performance target in each Award Metric. If differing performance targets are achieved among the Award Metrics then the Quarterly Award will be weighted between the Award Modifiers as set forth below.